

CADES SCHUTTE
A Limited Liability Law Partnership

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HILO MEDICAL CENTER a dba of the
Hawaii Health Systems Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LAURENCE R. NYE,
Plaintiff,

v.

HILO MEDICAL CENTER, QUEEN'S
MEDICAL CENTER, TERRY G.
SMITH, M.D., AND DOE
DEFENDANTS 1-50,
Defendants.

HILO MEDICAL CENTER,
Third-Party Plaintiff,

v.

BAY CLINIC, INC. dba HILO BAY
CLINIC, a Hawaii non-profit
corporation, RALPH BROWN, M.D.,
DONNA TING, M.D., STEFAN
HARMELING, M.D. and DOE
DEFENDANTS 1-10,
Third-Party Defendants.

CIVIL NO. CV09-00220-JMS KSC

(Civil No. 09-1-0166-01 (BIA)
Circuit Court of the First Circuit,
State of Hawaii)

**FINDINGS AND
RECOMMENDATION TO
GRANT DEFENDANT/THIRD-
PARTY PLAINTIFF HILO
MEDICAL CENTER'S MOTION
TO REMAND FILED JUNE 15,
2009**

**FINDINGS AND RECOMMENDATION TO GRANT
DEFENDANT/THIRD-PARTY PLAINTIFF HILO MEDICAL CENTER'S
MOTION TO REMAND FILED JUNE 15, 2009**

Defendant/Third Party Plaintiff Hilo Medical Center's Motion To Remand, filed on June 15, 2009 ("Motion"), came on for hearing before the Honorable Kevin S. C. Chang on July 16, 2009. Kristin Shigemura appeared for Hilo Medical Center ("HMC"), Thomas Helper appeared for Third-Party Defendant Bay Clinic, April Luria appeared for Defendant Terry G. Smith M.D., Edmund Burke appeared for Defendant Queen's Medical Center, and Glenn Uesugi appeared for Plaintiff Laurence R. Nye ("Nye"). No party filed an opposition to the Motion.

Based on the record and evidence presented, the Court recommends that the Motion be GRANTED for the following reasons:

1. HMC is a dba of the Hawaii Health Systems Corporation ("HHSC"), which is an agency and instrumentality of the State of Hawaii as provided in Haw. Rev. Stat. ch. 323F.
2. HHSC is entitled to the same privileges and immunities as the State of Hawaii. Haw. Rev. Stat. § 323F-7(c)(11).
3. As such, HMC is cloaked in the State of Hawaii's sovereign immunity.
4. Under the Eleventh Amendment of the United States Constitution, the Federal Court lacks jurisdiction to hear suits commenced or

prosecuted against one of the United States by a citizen of that state.

5. Plaintiff Nye is a citizen of the State of Hawaii.
6. HMC has not waived its immunity from suit in any way.
7. Accordingly, Plaintiff Nye's claims alleged against HMC in the Complaint filed January 23, 2009 may not be prosecuted in this Court and should be bifurcated and remanded to the Circuit Court for the First Circuit of Hawaii pursuant to 28 U.S.C. § 1447.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, August 11, 2009.




Kevin S.C. Chang
United States Magistrate Judge

Laurence R. Nye v. Hilo Medical Center, et al.; CIVIL NO. 09-1-0166-01 JMS KSC;
FINDINGS AND RECOMMENDATION TO GRANT DEFENDANT/ THIRD-PARTY
PLAINTIFF HILO MEDICAL CENTER'S MOTION TO REMAND FILED JUNE 15, 2009